HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4196 OF 1996.

Shivaji Hanamant Sugare. ..Petitioner.
Versus.
Sachin Gopalrao Patil & Others. ..Respondents.

None for the petitioner.

Mr. R. M. Patne, A.G.P. for the State.

CORAM: S. B. MHASE &
SMT. NISHITA MHATRE, JJ.

DATE: FEBRUARY 7, 2007.

P.C.

1. The petitioner has approached to this Court under Article 226 of the Constitution of India challenging the validity, legality and propriety of the judgment and order dated 7.6.1996 passed by the Maharashtra State Consumer Disputes Redressal Commission, Mumbai in Appeal No.326 of 1996 arising out of judgment and order dated 5.2.1996 passed by the District Consumer Redressal Forum, Solapur in Consumer Complaint No.182 of 1994 whereby the petitioner was directed to pay amount of instalment totalling into Rs.8,400/- and compensation for mental agony of Rs.500/- and cost of proceeding of Rs.250/- to the complainant - respondent no.1 with interest at the rate of 12% p.a. from 25.7.1994 till realisation of

the amount within 15 days from the service of the order. The petitioner has also challenged the legality and validity of the provisions of section 27 of the Consumer Protection Act, 1986 whereby the warrant of arrest has been taken out against the petitioner by the respondent - State.

2. This petition was admitted on 14.8.1996 and ad-interim relief was granted to the effect that pending hearing and final disposal of the petition, all proceeding under section 27 of the Consumer Protection Act, 1986 initiated by the District Consumer Forum, Solapur in Consumer Complaint No. 182 of 1994 be stayed.

3. Learned counsel for the petitioner and the petitioner, both are absent when the matter is called for hearing.

4. Learned AGP Shri. R.M.Patne who appears for the respondent - State of Maharashtra submitted that the petition is not maintainable before this Court so as to challenge the orders passed by the District Consumer Forum and State Consumer Commission. He submitted that the remedy of revision as against those orders is available and the petitioner ought to

have approached the National Consumer Disputes Redressal Commission, as provided in the said Act. He also submitted that challenge to section 27 of the said Act is not valid, because the validity of the said Act, including the validity of section 27 of the said Act, has been considered by the Apex Court in the matter of **State of Karnataka v/s. Vishwabharathi House Building Co-op. Society & Others (2003) 2 SCC 412.** Learned AGP also submitted that section 27 as was in force when the petition was filed is not in existence, since the statute has been radically amended in the year 2002 and new the section 27 is a quite different section than the earlier section. Learned AGP submitted that earlier as against the order passed under section 27 no remedy was provided, but now in view of the insertion of section 27, the remedy of appeal as against the order passed under section 27 has been provided, and therefore, the challenge on the point of vires does not survive.

5. We are in agreement with the learned AGP - Mr. Patne. So far as the vires is concerned, in the matter of State of Karnataka v/s. Vishwabharathi House Building Co-op. Society & others (supra), the Apex Court has considered the vires of various sections and has held that the total Act is valid one.

The validity of sections 25 & 27 as it then existing has been also considered by the Apex Court. In view of the decision of the Apex Court referred to above, the constitutional challenge is no more res-integra and does not survive for our consideration. Therefore, we reject the petition filed by the petitioner challenging the constitutionality in respect of section 27 of the Act is concerned.

6. We further agree with learned AGP Mr. Patne that the alternate remedy as against the order passed by the District Consumer Forum and State Consumer Commission is available to the petitioner by way of a revision to the National Consumer Disputes Rederssal Commission and the petitioner has approached this Court without following that efficacious, speedy and effective remedy available to him. Therefore, we do not desire to interfere with the orders which are impugned in this petition. Petition is dismissed. Rule discharged.

(SMT. NISHITA MHATRE, J.) **(S.B.MHASE, J.)**

:sachin/2007/nnm/..